IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 6145 of 1992

Between:

M.Venkatachalapathi S/o.Late M.Laxmaiah
Gandhi Chowk Guntakal , Anantapur dist.

..... PETITIONER

AND

The Dy.Commercial Tax Officer, Guntakal , Anantapur Dist.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction , particularly one in the nature of writ of Mandamus and declare the Anantapur Dist Gazettee (Extraordinary) No.2 Dt: 25-2-92 on the file of the Dy.Commercial tax Officer , Guntakal , Anantapur District as illegal, against the rules and in violation of the principles of natural Justice and pass such other order or orders.

Counsel for the Petitioner:MR.A.BHASKARA CHARY

Counsel for the Respondent No.: GP FOR COMMERCIAL TAXES.

The Court made the following :

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No. 6145 OF 1992

ORDER : (Per Sri Bilal Nazki,J)

The petitioner submits that he is the eldest son of 3rd wife of one M.Laxmaiah. Petitioner got younger brother namely Kasi Viswanath. Father of the petitioner died in the year 1973. He executed a registered Will in the year 1972, bequeathing the property to his sons. In terms of the Will, 1/3rd portion of house in Door No.10/317 was bequeathed to the petitioner and 2/3rd was given to other brothers including step-brothers of the petitioner. House in Door No.11/124 was given to the petitioner and houses in Door NOs.11/125 and 11/126 were bequeathed to the younger brother of petitioner.

After the death of the father of petitioner, the petitioner, his younger brother and his mother were residing together. In the year 1979, a partnership Firm was formed in the name of 'M/s.Hampinath & Company'. The partners of the Firm were, Muthyala Hampinath Gupta, who was the Managing Partner, Muthyala Adi Lakshmamma and Muthyala Ratnamma. The petitioner was added as a minor

partner and according to the terms and conditions, the petitioner, who was the minor partner, was entitled to 20% profits of the Firm. Petitioner had no knowledge about the inclusion of his name in the above partnership firm. Other partners were closely related to the petitioner, therefore it appears that the petitioner's name was added as minor partner to give him benefits of the Firm. The mother of the petitioner was in ill-health and she died in 1982. She also did not have any knowledge about the inclusion of her name in the partnership firm.

The firm was dealing with sale in goods and was also carrying on some commission business. The firm was discontinued in the year 1984. The partners of the firm obtained loans from various persons and they did not pay them. Some of the creditors approached the petitioner in January, 1987 and demanded to discharge the debts of the Firm. Then only the petitioner came to know about the inclusion of his name in the Firm. After enquiry, the petitioner came to know that his name was included as 4th partner in the Firm. Firm was not continued after 1984. The petitioner was entitled to profits of 20% according to the terms and conditions of the Partnership Deed and the petitioner filed a suit being O.S.No.154 of 1987 on the file of District Munsif, Guntakal in February, 1987 for dissolution of the partnership Firm and to produce the accounts. This suit was decreed on 20th April, 1988. Other partners did not submit the accounts. The petitioner filed I.A.No.282 of 1988 in O.S.No.154 of 1987 to appoint a Commissioner and pass preliminary decree. Same was allowed and the Commissioner seized the account books from the business premises and the application is still pending.

While so, the respondent issued proceedings on 17.10.1988 for public auction of the properties of all parties of the Firm for recovery of arrears of taxes of Rs.15,96,280-52 ps. Auction date was fixed on 26.10.1988. The copy of the notice was served on Secretary, Kirana Dealers Association and the copy of the notice was not served on the petitioner. The properties of all partners of 'Hampinath and Company' were mentioned. The houses belonging to the petitioner and his

younger brother who is not a partner in the above Firm, were also shown. Immediately after coming to know about the auction notice through the Association, the petitioner and his brother submitted representation to the respondent. Thereafter, sale was not conducted.

Petitioner submitted that creditors of the Firm had filed I.P.No. 8 of 1987 against other three partners of the Firm, before Sub-Court, Gooty. The petitioner came to know that the sale notice was issued by the respondent in Ananthapur District Gazette on 25.02.1992 and the Gazette was communicated to the Secretary, Kirana Dealers Association, Uravakonda. Petitioner came to know about the notification through the Association, only on 08.05.1992. He secured a copy of the notification and challenged it in the Writ Petition. In the notification, it is stated that on 14th June, 1989, the landed property of the petitioner has been attached and taken under management under Section 28 of Act II of 1964 and the Assistant Commercial Tax Officer, Guntakal was appointed as agent to have charge of it. The impugned notice states that the property had to be auctioned on 19.05.1992 for recovery of the taxes of Rs.21,35,739-52 Ps. In the notification, it is mentioned that the petitioner is one of the partners of 'M/s.Hampinath & Company', Guntakal. Door Numbers 11/125 and 11/126 belong to the petitioner, who was not a partner in the Firm and the petitioner has no share in those houses, therefore it is stated that the respondent could not attach the properties put for auction. House in Door No.10/317 (1/3rd portion) and house in Door No.11/124 belong to the petitioner and are being subjected to auction. It is contended that the respondent has no power or jurisdiction to attach and auction the properties of a person who was a minor and was only included as a partner to have a share in the benefits of the Firm.

It is submitted that the arrears of Sales Tax are for the years 1981-82 to 1984-85, but the Firm had been discontinued from the year 1984. On the following grounds, the impugned notification has been challenged :

a. The provisions of Section 15(b) of A.P.General Sales Tax Act lays down that the assessing authority shall proceed in respect of an assessment against every person who was at the time of such discontinuance of the Firm, was a partner in the said Firm.

b. Rule 22 of A.P.General Sales Tax Act contemplates that every person who was at the time of discontinuance of the Firm, or a partner of such Firm shall be jointly and severally liable for the amount of penalty or other sum payable under the provisions of the Act.

Similarly it is contended that Rule 51 of A.P.General Sales Tax Act also contemplates that the partners shall be jointly and severally be responsible for the payment of tax and surcharge etc. It is further contended that the impugned notice shows that the property was attached on 14th June, 1989 and taken under management under Section 28 of the A.P.Revenue Recovery Act. Sections 28 and 29 of A.P.Revenue Recovery Act contemplate that the Collector has to issue a notice on the defaulter in the manner prescribed. Collector is supposed to issue a notice of demand and in case of default, the property can be attached. In the present case, no notice had been issued either by the District Collector or by the respondent.

Lastly it is contended that in the auction notice dated 17.10.1988, arrears were shown as Rs.15,96,280-52 Ps., whereas in the present notice, the arrears have been shown as Rs.21,35,739-52 Ps. It is also contended that the petitioner was a minor partner in the Firm and he was admitted with the consent of other partners and without his knowledge and therefore, he was not liable for any act of the Firm in accordance with the provisions of the Indian Partnership Act.

In the counter affidavit, it has been stated that the petitioner has himself admitted that he was a minor partner in the Firm and was entitled to 20% of the profits of the Firm. In fact, the petitioner himself has signed in Form-D application for Registration. The Registration

File of the Firm in Form-D discloses the names of the partners of the Firm, in which the petitioner's name is included. It is also contended that the correctness of the assessment of taxes was not questioned or challenged by any of the partners of the Firm, including the petitioner. It is further contended that it is not correct that the Houses bearing Door Nos. 11/125 and 11/126 belong to the brother of the petitioner. The Municipal authorities have confirmed by their letter, dated 30.07.1986 that the above houses belong to Sri Venkatachalapathi, the petitioner herein. It is also contended that the liability of partners is joint and several. It is also stated that minor partner can be made liable to pay the taxes due, to the Government. It is also stated that in terms of Section 15 of Andhra Pradesh General Sales Tax Act and Rules 22, 51 and 50(a) contemplate that each partner is jointly and severally responsible for payment of taxes and records reveal that the other partners did not have any properties in their names, therefore action was initiated for attachment of properties of the petitioner, as he is also responsible for payment of taxes.

It is further contended that under Section 17(c)(1),(2) and (3) of the Andhra Pradesh General Sales Tax Act, the Deputy Commissioner has the powers of a Collector under the Andhra Pradesh Revenue Recovery Act, 1964 for the purpose of recovery of any amount due under the Act. The attachment was carried, on orders of the Deputy Commissioner and Department had issued notices under Forms 4 and 5 as required under Revenue Recovery Act, for attachment of properties of the petitioner, which were served by affixture on the house of the petitioner. The signatures of the witnesses for having affixed the notices, were also obtained as the petitioner was not available.

Now, in the light of these assertions made by the parties, the only question which needs to be answered is, whether the respondents could proceed against the petitioner because, he was minor at the

time of existence of partnership Firm.

Section 30 of the Indian Partnership Act, 1932 (hereinafter referred to as 'the Partnership Act') would be important in this connection. It reads as under :

"30. Minors admitted to the benefits of partnership :-

1. *A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.*

2. *Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.*

3. *Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.*

4. *Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in Section 48;*

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and hereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

5. *At any time within six months of his attaining majority or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm :*

Provided that if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

6. *Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.*

7. *When such person becomes a partner,-----*

   a. *his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and*

   b. *his share in the property and profits of the firm shall be the share to which he was entitled as a minor.*

8. *Where such person elects not to become a partner,---*

   c. *his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice.*

   d. *his share shall not be liable for any acts of the firm done after the date of the notice, and*

   e. *he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section(4).*

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of Section 28."

From a perusal of Section 30, it is clear that a minor has a right to such share of the property and of the profits of the firm as may be agreed upon. His share in the firm is liable for the acts of the Firm, but the minor is not personally responsible for such an act.

Sub-section (5) of Section 30 lays down that within six months of attaining majority or of minor's obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such

person has to give a public notice that he has elected to become or that he has elected not to become a partner in the Firm and such notice shall determine his position as regards the firm.

The proviso shows that if the minor fails to give such notice, he shall become partner of Firm on expiry of such period. The petitioner on his own, has stated that he accepted his status as a partner of Firm when it was known to him that he had been admitted as partner. He filed a suit in O.S.No.154 of 1987 for dissolution of partnership Firm and also for rendition of accounts. Obviously in 1987, the petitioner had even attained majority. The Writ Petition had been filed in the year 1992 and in the affidavit, the petitioner has stated that he was aged 26 years. That would mean, in 1987 he was aged 21 years. Since the petitioner has acknowledged the partnership and by virtue of proviso to Sub-section 5 of Section 30 of the Partnership Act, he has become a full partner in the partnership Firm, therefore he cannot turn round and say that he has no liability, particularly in view of Sub-section 7 of Section 30 because, in terms of Sub-section 5 of Section 30, the petitioner did not repudiate his status as a partner and after six months of attaining majority, he would become a full partner of partnership Firm and as a matter of fact, after attaining the majority, he filed a suit for rendition of accounts and profits. He becomes personally responsible and liable to third parties for all acts of the Firm from the day he was admitted to the benefits of the partnership. For better appreciation, Section 30(7)(a) is again reproduced hereunder;

7. *"When such person becomes a partner,-----*

> *(a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership."*

Since the petitioner has chosen to be a partner of the Firm, therefore this Writ Petition has no merit and it is accordingly

dismissed. No costs.

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(BILAL NAZKI, J)

07.09.2004.

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(S.ANANDA REDDY,J)

ajr

To:

1 The Dy.Commercial Tax Officer, Guntakal , Anantapur Dist.

2 Two C.Cs. to the GP for Commercial Taxes, High Court buildings, Hyderabad (O.U.T.)

3 Two C.D. Copies.